REMARKS

Claims 1-22 remain in the application for reconsideration. Claims 23-24

have been cancelled without prejudice or disclaimer to reduce the issues on

reconsideration.

Prior Art Rejections:

Claims 1, 3, 6-8, 10, 13-15, 17, 20, 21, and 23 remain rejected under 35 U.S.C.

§102(e) as being anticipated by U.S. Patent 5,884,037 to Aras et al. (Aras).

Claims 2, 4-5, 9, 11-12, 16, 18-20, 22, and 24 have been rejected as being

unpatentable under 35 U.S.C. § 103(a) over Aras, as above, further in view of U.S. Patent

6,442,138 to Yin et al. (Yin).

Yin has been newly relied upon and appears raise the only new issue by the Examiner

his answer to Applicant's Appeal Brief.

Reply to Examiner's *Response to Arguments*:

Rejection based on Aras:

With regard to the §102(e) rejection based on Aras, Applicant previously argued, in

brief, that Aras appears to be concerned with ways to forecast <u>or predict future bandwidth</u>

availability based on current and past trends. Thus, Aras teaches nothing about determining actual bandwidth utilization nor does Aras teach or suggest "broadcasting additional information using an unused portion of the previously allocated bandwidth" as was claimed.

While Applicants believe that the claims as presented in the appeal were sufficiently distinguished, the Examiner now argues that *"determining whether information scheduled to be broadcast digitally is actually utilizing all bandwidth previously allocated..."* (emphasis Examiner's) was not found persuasive since *"[t]he term "scheduled" which sets the invention in the condition of "estimation", and the word "actually" is an adverb that is describing a utilization action is actually being done"*

The above notwithstanding, in the Final Office Action, the Examiner kindly acknowledged that the present invention may distinguish over Aras when he states on page 3 of the final Office Action:

"... applicant's invention might be different from Aras's, however, the claimed limitations have not made enough distinction" (emphasis added).

In an effort move this case forward, the independent claims have been amended to eliminate the word "scheduled". For example, as amended claim 1 now recites :

"determining in real time whether information guaranteed a fixed amount of bandwidth for a fixed length of time... is actually utilizing all bandwidth previously allocated to broadcasting the information..." (emphasis added).

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Independent claims 8 and 15 have been amended with similar language believed to clearly distinguish over Aras.

Further, claim 21 has been amended to recite:

"...a bandwidth pipe operable to transport digital information, the information comprising guaranteed content and opportunistic content, the guaranteed content guaranteed a fixed amount of bandwidth for a fixed length of time;

a monitor to determine in real time bandwidth usage in the bandwidth pipe;

a system manager to broadcast opportunistic content if there is available bandwidth in the bandwidth pipe, using an unused portion of the bandwidth pipe previously allocated to the guaranteed content." (emphasis added)

The features noted above recited in the independent claims are not taught or suggested by Aras. Thus, it is respectfully requested that these claims be reconsidered and the rejection based on Aras be withdrawn.

Rejection based on Aras and Yin:

Yin appears to be directed to a system for controlling the admissions of

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network connection requests. The Examiner has relied on Yin to reject the dependent claims and particularly for showing the use of percentages to indicate the total bandwidth allocated, the total bandwidth available, and preset bandwidth limitations. However, Yin does not appear to teach or suggest "*determining in real time whether information guaranteed a fixed amount of bandwidth for a fixed length of time broadcast digitally is actually utilizing all bandwidth previously allocated to broadcasting the information; and if not, broadcasting additional information using an unused portion of the previously allocated bandwidth*". As recited in the amended independent claims, nor is Yin relied upon for that purpose.
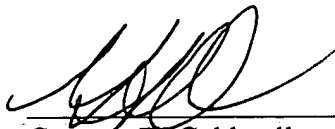
It is respectfully submitted that the dependent claims are not obvious over the prior art of record if the claims from which they depend are not obvious. Thus, it is respectfully requested that the rejection based on Aras in combination with Yin be withdrawn.

What the Examiner has done is attempted to construct the claimed invention from the referenced patents with no independent teaching for the construction he proposes. Applicant has solved a fundamental problem in the area of bandwidth management. Applicant's invention is simply not suggested by the prior art and, therefore, Applicant is entitled to protection sought by the rejected claims.

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In view of the foregoing, it is respectfully requested that the application be reconsidered, that claims 1-22 be allowed and that the application be passed to issue. Please charge any shortages and credit any overcharges to our Deposit Account number 02-2666.

Respectfully submitted,
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